

1912-001 Chancery Causes: James M. Flanary Jr & Co vs Board of Supervisors  
Lee Co.

Newberry, Bledsoe, Lockhart, Childress, Minor, Chandler, Poteet,  
Wilder, Albert, Steele, Coleman, Mursey, Marshall, Lovelace,  
Wygal, Rutherford, Harely, Hyatt, Orr, Thompson, Davidson,  
Long, Stewart, Pennington, Graham, Gravelly, Sarver, Russell,  
Mullens, Sewell, Bailey, Barlow, Nares, Fugate

CA - Other

T - Elections

Government

Transportation



To the Hon. H. A. W. Skeen, Judge of the Circuit Court  
of Lee County, Virginia:

Humbly complaining, your orators, James M. Flanary, Jr.  
P. J. Newberry, Patton Bledsoe, S. A. Lockhart, Jefferson Childress, Elbert Minor, T. J. Chandler, Thomas S. Poteet, W. R. Willder, J. P. Albert, J. F. Albert, C. J. Steele, W. P. Coleman, J. J. Munsey, W. N. Munsey, J. B. F. Munsey, C. W. Marshall, R. P. Marshall, Wm. Lovelace, M. B. Wygal, C. B. Wygal, William Rutherford, R. B. Havely, A. R. Hyatt, W. E. Orr, J. P. Thompson, William L. Davidson, G. W. Long, W. P. M. Stewart, R. A. Pennington, James V. Graham, William Snavelly, James Sarver, J. M. Russell, and Wiley Mullens, citizens and tax payers of said County, and of the Jonesville Magisterial District in said County, and who sue on behalf of themselves and all other tax payers of said County and District, would respectfully represent and show unto your Honor that on the 19th day of September, 1910, an order was made and entered in your Honor's Court requiring an election to be held in said County on the 29th day of November, 1910, on the question whether the Board of Supervisors of said County should issue bonds for the purpose of macadamizing and otherwise permanently improving the roads in the Rose Hill, Jonesville, Rocky Station and Yokum Station Magisterial Districts in said County. A copy of which order for said election is herewith filed as part hereof marked "Exhibit A".

It will be seen by an inspection of said order that among the roads to be macadamized and otherwise permanently improved in the Jonesville Magisterial District were:

" A road leading from a point east of Judge Orr's residence from the old Fincastle road westwardly to the White Shoals Magisterial District, near Wesley's chapel, a distance of about four miles".

" The road known as the Wallens creek road leading from the Rocky Station District line near the residence of H. T. Fulker-



son, (meaning H.T. Ferguson) eastwardly ( meaning westwardly) crossing the Jonesville and Blackwater pike in the neighborhood of Hunters Gap to a point near the Merriman Church".

Also, " A road leading from the junction of the Jonesville and Ben Hur pike near Ben Hur and the Cane creek road eastwardly to the Rocky Station District line near G. W. King's residence, a distance of about two and one-fourth miles".

Your orators will further represent and show unto your Honor that pursuant to said order an election was duly held in said County on the said 29th day of November, 1910, the result of which was duly certified, by the Commissioners of election of the said County, to your Honor's Court as required by law. And said election having resulted favorably to the issuing of bonds for the improvement of the roads in the said Districts of said County, your Honor, at the session of your Court at the Court-house in Jonesville, Virginia, on the 10th day of December, 1910, entered an order showing the fact that the said election had resulted favorably to the issuing of bonds for the purpose aforesaid in said Districts, and in said order your Honor further provided that the Board of Supervisors of said County proceed at their next meeting to carry out the wishes of the voters as expressed in said election, and to determine what amount of bonds might be necessary for said purpose so that the same should not be in excess of \$89,000.00 in the Jonesville Magisterial District. A copy of said order is herewith filed as part hereof marked "Exhibit B". And pursuant to your Honor's said order the said Board of Supervisors of said County did proceed and issue bonds to the amount of \$89,000.00 for the purpose of macadamizing and otherwise permanently improving the roads, in the said Jonesville Magisterial District, mentioned in the order for said election, and voted upon by the electors of said County at said election, on the 29th day of November, 1910, ~~which~~ which bonds issued for the benefit of the Jonesville Magisterial District were placed upon the market and sold at par and two percent premium, thus raising a fund of \$89,000.00 plus two percent,



for the purpose of macadamizing and otherwise permanently improving the roads and bridges in the said Jonesville Magisterial District. A copy of said order of said Board showing said sale is herewith filed marked, "exhibit C".

Your orators will further represent and show unto your Honor that on the 2d day of October, 1911, the said Board of Supervisors, of said County, proceeded to apportion the said fund to the said roads to be improved under the said bond issue, in said Jonesville Magisterial District, and in said apportionment the sum of \$4,500.00 was apportioned to the road leading from a point east of Judge Orr's residence from the old Fincastle road to the White Shoals Magisterial District near Wesley's Chapel; and to the road known as the Wallens creek road leading from the Rocky Station District line near the residence of H. T. Ferguson westwardly crossing the Jonesville and Blackwater pike, in the neighborhood of Hunters Gap, to a point near the Merriman Church, a distance of about five miles, \$2,000.00 was apportioned; which road has since been divided into two sections for convenience, one section lying west of the Jonesville and Blackwater road near Hunters Gap, and the other section lying east of the Jonesville and Blackwater road at a point near Hunters Gap; the said \$2,000.00 to be equally divided between said two sections.

The sum of \$7,000.00 was apportioned to the road leading from the junction of the Jonesville and Ben Hur pike near Ben Hur and the Cane creek road eastwardly to the Rocky station District line near G. W. King's residence, a distance of about two and one-fourth miles; and,

In said apportionment the sum of \$37,000.00 was apportioned to the road leading from near Jonesville to ~~the~~ Blackwater; and \$6,000.00 for the purpose of building a bridge on said road across Powells river.

And apportionments were made to the other roads in said District voted on at said election for a bond issue. A copy of said order of apportionment is herewith filed as part hereof, marked "Exhibit D".



These apportionments were all considered just and equitable, and no serious objections were made by any body as to the apportionments made by the said Board of Supervisors on said several roads, and under the apportionments thus made some of the roads in said District were let to contract and considerable work done under said contracts. But it soon developed that the amount realized under the sale of bonds in said District would fall far short of the improvement of all the roads in said Jonesville District as contemplated and desired by the people.

On the road leading from a point east of Judge Orr's residence to a point near Wesley's Chapel, no contract has yet been made, by said Board, for the improvement of said road, though bids have been offered, and some that your orators considered reasonable, but from some cause or other these bids were refused and nothing has been done to improve said road.

On the Wallens creek road, or rather <sup>the</sup> two sections of said road, no steps whatever have been taken to improve said roads.

On what is known as the Cane creek road leading from the Jonesville and Ben Hur pike to the District line near G. W. King's residence, that road has been let to contract and has been graded, but no macadam has yet been put on; and your orators are advised and allege that there is the sum of about \$2300.00 unexpended on this road that was apportioned to it, and which they allege will be nearly sufficient to macadamize said road and put it in good condition.

On what is known as the Jonesville and Blackwater road, the grading of said road has not been completed, although the enormous sum of \$38,683.36 has been expended on said road, and nearly \$6,000.00 for said bridge.

Notwithstanding the failure of the said Board of Supervisors to take suitable steps to improve the four roads here complaining, on which nothing has been done, except as to the Cane



creek road, on the 27th day of September, 1912, the said Board of Supervisors entered an order which your orators allege is intended to divert the money that has been heretofore apportioned to the four roads here complaining, and use the same to complete the grading of the said Blackwater road. A copy of said last mentioned order is herewith filed as part hereof marked "Exhibit E".

Now, your orators are advised and allege that the said order made on the 27th day of September, 1912, was illegal and should be held as void; that the said Board of Supervisors had no legal right or authority to enter said order, and to take from the said four roads, here complaining, the funds that had been apportioned and set apart for the improvement of said roads, and divert the same to the benefit of, and use the same on, the said Blackwater road, or any other road in said District, or for any other purpose.

The object, therefore, of this bill is to have the said last mentioned order set aside, annulled and declared void, and to compel the said Board of Supervisors to carry out the provisions of the said order of the 2d day of October, 1911, apportioning said funds; and that they be compelled to let to contract, or take such legal steps as may be necessary, to improve the said four roads here complaining, as originally intended and as voted upon by the people of said County and District; and that the said Board of Supervisors be enjoined and restrained from interfering with, or diverting any of the said funds apportioned to said four roads, or using the same for any purpose other than that originally intended and provided for in their said order of apportionment made on the 2d day of October, 1911; and your orators allege that said four roads are of equal importance to any others in said District intended to be improved by said bond issue.

The prayer, therefore, of your orators is: that the said Board of Supervisors of Lee County, Virginia, composed of the following members: D. C. Sewell, Chairman, and C. D. Bailey, T. C. Bar-



low, J. J. Maness and C. D. Fugate, be made the parties defendants to this bill and required to answer the same, but they need not do so under oath, that being expressly waived; that the said Board of Supervisors be enjoined and restrained from diverting from the said four roads any of the funds, or money, heretofore set apart and apportioned to said roads, respectively, by the said Board by its order dated the 2d day of October, 1911, to any other roads in said District, or to any other purpose; that proper process issue and all proper orders be entered, and that the relief above prayed for be granted, together with all such other, further and general relief as your orators, and the other tax payers of said County and District in the premises may be entitled. And they will ever pray, etc.

J. C. Noel.  
+ James W. Orr p q

Virginia,

Lee County, to-wit:

This the 16th day of October, 1912, W. E. Orr, one of the plaintiffs in the foregoing bill, personally appeared before me, a Notary Public for the County aforesaid, and made oath that all the allegations in the foregoing bill, so far as they depend upon his own knowledge, are true, and so far as they depend upon information derived from others, he believes them to be true.

Given under my hand this the 16th day of October, 1912.

Golden Barton N.P.

To D. C. Sewell, Chairman, and C. D. Bailey, T. C. Barlow, J. J. Maness and C. D. Fugate, members of the Board of Supervisors of Lee County, Virginia,



Gentlemen:

You will please take notice that on the 19th day of October, 1912, at the Court-house in Wise County, Virginia, we will present to the Hon. H. A. W. Skeen, Judge of the Circuit Court of Lee County, Virginia, in vacation, a bill, of which the foregoing is a copy, and move said Judge to grant an injunction thereon pursuant to the prayer of said bill.

This the 16th day of October, 1912.

*James M. Flanery & others*  
*Plaintiffs*  
By *J. C. Nail & James W. Orr* attys

*the wife of*  
I have this day delivered to *the wife of* D. C. Sewell, Chairman of the Board of Supervisors of Lee County, Virginia, a copy of the foregoing bill and notice. *explaining the same to her, said Sewell not found at his usual place of abode & she found there B. &auer 16 years of age.*  
Given under my hand this the 16th day of October, 1912.

*P. W. Ely D. S. for*  
*A. D. Robbins* Sheriff of Lee County.



James M. Flanery <sup>et al.</sup>  
vs. Bill in Chancery.  
Board of Supervisors

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Signed to Counsel

J. C. Moel.  
Punnettton Yag.

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To the Honorable Judges of the Supreme Court of Appeals of Virginia.

Your petitioners, J. M. Flanary, Jr., P. R. Newberry, Patton Bledsoe, S. A. Lockhart, Jefferson Childress, Elbert Minor, T. J. Chandler, Thomas S. Poteet, W. R. Wilder, J. P. Albert, J. F. Albert, C. J. Steele, W. P. Coleman, J. J. Munsey, W. N. Munsey, J. B. F. Munsey, C. W. Marshall, R. P. Marshall, William Lovelace, M. B. Wygal, C. B. Wygal, William Rutherford, R. B. Havelly, A. R. Hyatt, W. E. Orr, J. P. Thompson, William L. Davidson, G. W. Long, W. P. M. Stewart, R. A. Pennington, James V. Graham, Wm. Snavely, James Sarver, J. M. Russell and Wiley Mullens, citizens and taxpayers of the County of Lee, and of the Jonesville Magisterial District in said County, and who sue on behalf of themselves, and all other tax-payers of said County and District, respectfully represent that on the 24th day of October, 1912, they presented their bill in chancery, sworn to according to law, to the Honorable H. A. W. Skeen, Judge of the Circuit Court of Lee County, Virginia, in vacation, praying an injunction to enjoin and restrain the Board of Supervisors of Lee County, Virginia, from diverting from the four roads, mentioned in said bill, any of the funds, or money, which had been set a part and apportioned to said roads, respectively, by the said Board of Supervisors, by its order dated the 2d day of October, 1911, to any other roads in said Jonesville Magisterial District, or to any other purpose.

On the presentation of said bill to said Judge, in vacation, the said Board of Supervisors, defendants, appeared and demurred to said bill and filed their answer, and the cause came on to be heard before said Judge, at the Court-house of Wise County, on said day, upon the bill of the complainants and exhibits filed therewith, the demurrer of the defendant, joinder therein, the answer of the defendant and exhibit therewith, and general replication thereto, and argument of counsel.



On consideration of which, the demurrer of the defendant was overruled, and the judge, after hearing the arguments of counsel, and considering the facts set up in the bill and the answer, was of the opinion that the injunction prayed for should not be awarded and, therefore, denied the prayer of the said bill for said injunction, and adjudged costs against the plaintiffs.

It will be observed that the main point of contention is the validity of the order of the said Board of Supervisors, entered on the 27th day of September, 1912. Said Board of Supervisors had previously, and on the 2d day of October, 1911, entered an order (a copy of which is filed with the plaintiffs bill) apportioning the funds arising from the sale of bonds in the Jonesville Magisterial District, among all the roads voted upon at the election when the said bond issue was carried. The contention of the plaintiffs was, and is, that said order, apportioning said funds among the several roads in said District, was final and conclusive, and that the Board of Supervisors had no right to set aside or interfere with the said apportionment which had previously been made, by said Board, of said funds, by entering the order complained of, on the 27th day of September, 1912. The four roads complaining were roads voted on in said election and were entitled to their proper portion of the funds arising from the sale of the Bonds in said Magisterial District, and the apportionment made on October, 2d, 1911, was deemed reasonable and just, and was acquiesced <sup>in</sup> by the citizens and tax-payers of the said District. And the Board of Supervisors, under said apportionment, <sup>undertook</sup> to improve the several roads in said District, although nothing had been done to improve three of the roads mentioned in the bill.

The defendants in their answer take the position that the Board of Supervisors have the exclusive jurisdiction of roads, bridges, etc., and the Court has no power to interfere with their



action in reference thereto, and they insist that if the parties complaining have any remedy it is by appeal from the action of said Board.

It is true that the Board of Supervisors, under section 944a of the Code, has jurisdiction over all the County roads, causeways, bridges, &c., but that jurisdiction is not exclusive as erroneously contended by the defendants; and there is no statutory provisions for an appeal from the action of the Board apportioning the funds. Section 836, which seems to be relied on by the defendants, only provides for an appeal in case of the allowance or disallowance of a claim.

And your petitioners rely, with confidence, in support of their position, on the cases of Roper and als. v. McWhorter and als, and Roper and als. v. Ballentine and als, reported in 77 Va. p. 214, in which the Court says:

"The right of tax-payers to resort to equity to restrain municipal corporations and their officers, and quasi corporate bodies and their officers from transcending their lawful powers or violating their lawful duties in any way injuriously affecting the tax-payers, such as making unauthorized appropriations of the corporate funds or an illegal disposition of the corporate property, is well established".

And also, the case of Johnson and others v. Black and others, reported in 103 Va. p. 477; and they rely on this last mentioned case to defeat the claim of the defendants that the bill is multifarious, and also as to the jurisdiction of the Court, in which the Court says:

"No general or invariable rule can be laid down as to what constitutes multifariousness, but each case must be determined by its own circumstances. The criterion by which courts are governed is convenience in the administration of justice. If the bill accomplished the desired end in a convenient way for all concerned, and the mode adopted is not so injurious to anyone as to render it unjust for the suit to be maintained in that form, it will not be deemed to be multifarious."

And the Court further held:

"Equity has jurisdiction of a suit brought by one or more citizens and tax-payers, suing on behalf of themselves and others similarly situated to restrain the



illegal diversion of public funds by a Board of Supervisors of a county, and to compel the restitution of such funds which have been illegally diverted and lodged in the hands of persons not entitled thereto, and who had notice of the wrongful diversion, where the boards themselves will not act, or take the necessary steps to compel the restitution. This jurisdiction of Equity, which has long existed, has not been taken away by provisions of Sec. 836 of the Code as amended. Courts of Equity, having once acquired jurisdiction, never lose it because jurisdiction of the same matter is given to courts of law, unless the statute conferring such jurisdiction uses restrictive or prohibitory words".

It is respectfully insisted that these decisions settle the question of jurisdiction, and that the ~~act of the~~ Board of Supervisors, in entering its order on the 27th day of September, 1912, had no legal right to enter such order, the order of October, 2d, 1911, apportioning the funds, was final and conclusive, and the latter order should be held for naught, and the Board should be enjoined and restrained from carrying the same into effect. The effect of the last order entered by said Board was to divert the funds from the roads complaining in the bill to the Blackwater road that is: the road leading from Jonesville to Blackwater, and the action of the Board to divert the funds from said roads to the Blackwater road, or for any other purpose, was clearly an illegal act, and they should be enjoined and restrained from carrying <sup>out</sup> the same ~~out~~, to the detriment of the citizens and tax-payers interested in all the roads in said District, and especially in the four roads complaining. On three of the roads complaining nothing has been done as yet to improve them; on one, the Cane Creek road, a portion of the money apportioned to it has been expended, but the road has not been completed.

The bill alleges truthfully that the four roads complaining are of equal importance to any of the other roads, in said District, voted on, and if the Board imprudently let to contract the entire improvement of the Blackwater road, and it turned out that the funds apportioned to said road were not sufficient to pay for the entire improvement of said road, that is a misfortune, or over-



sight, or mistake, for which the four roads complaining, and the citizens and tax-payers interested therein, should not be held responsible. And if the said Board was misled as to the probable cost of improving the Blackwater road by the State Highway Commissioner, that is another mistake for which the complainants should not be held responsible. If the Board of Supervisors had the power to enter the said order complained of, on the 27th day of September, 1912, said power was arbitrarily and wrongfully exercised and the complainants should have a remedy, and that remedy, according to the decisions referred to, is in Equity, and they respectfully ask that the injunction prayed for be granted, and that the Court having taken jurisdiction go on and do full justice and protect the rights of complainants and various other citizens and tax-payers similarly situated.

The answer of the defendants admit that it will not take all of the money apportioned to the four roads complaining to complete the Blackwater road, and they say they expect to secure a convict road force next spring. If this is true, why not let the funds apportioned to the four roads remain, and use any other funds not heretofore apportioned, and the Convict road force, to complete the Blackwater road?

The original papers in the cause, together with a copy of the order made by the Judge of the Circuit Court, are herewith presented, and your petitioners pray that the injunction asked for be granted, and for general relief. And they will ever pray, &c.

J. L. Nail.  
James W. Orr } p. 9.







Virginia:

At a meeting of the Board of Supervisors begun and held for Lee County at the Courthouse thereof, on Monday, the 4th day of September 1911,

Present William Bailey, Chairman, H.F. Myers, J.M. Osborn, J.J. Maness and J.H. Humphreys, Members of the Board.

The Board of Supervisors recommends the pro ratta apportionment of the Bond issue funds among all of the roads named in the order of the Court for the Jonesville District and voted on by the voters of the said District and County. It is understood that this order does not conflict with the contract already entered into between the Board of Supervisors and the Cross Construction Company on the road from Jonesville to Blackwater.

Ordered that the Board be adjourned until in the morning at 9 o'clock.

William Bailey, Chairman.

*A True Copy from the record*

*J. A. Edds, Clerk*



To the Honorable H.A.W.Skeen, Judge of the Circuit Court for Lee County, Virginia.

The answer of the Board of Supervisors of Lee County, Virginia, at present composed of the following members, D.C.Sewell, Chairman, C.D.Bailey, T.C.Barlow, J.J.Maness, and C.D.Fugate, to a bill in Chancery to be presented to your Honor in vacation for an injunction against your respondent by James M. Flanary, Jr., and others.

For answer to the said bill or so much thereof as it deems it necessary that it should answer, answering it says:

Respondent's first comes and says that the said bill is not sufficient in law, the grounds for which are specified on separate sheets herewith filed as part hereof.

Not waiving the said demurrer but relying and insisting thereon, if other and further answer should be required of your respondent, it says that it is true that an order was entered by the Circuit court for Lee County on the 19th day of September, 1910, requesting the election Officers to open the poll and take a ~~vote~~ <sup>sum</sup> of the qualified voters of the County of Lee, on the 29th day of November, 1910, on the question whether the Board of Supervisors of the said County should issue bonds for the purpose of macadamizing and otherwise permanently improving certain roads located in the Rose Hill, Jonesville, Rocky Station and Yokum Station Magisterial Districts of said County, as is correctly shown by exhibit "A" filed with the said Plaintiff's bill.

Your respondent says that it is true that pursuant to the said order an election was held which resulted in favor of the issuance of bonds for road improvement in the said Jonesville Magisterial District, as well as the other Districts hereinbefore mentioned, and that pursuant to the said election and the order of the Circuit Court for Lee County entered on the 10th day of December, 1910, it was determined that \$89,000.00 of bonds should be issued for road improvement in the Jonesville Magisterial District. It is also true that the said bonds were sold as alleged in the Plaintiff's bill at the prices there stated.



After the said bonds had been sold and the proceeds thereof received and put on deposit with the Treasurer of Lee County, the State Highway Commission of Virginia, pursuant to law made and provided, sent its engineers into the County of Lee and in the said Jonesville Magisterial District and made surveys, locations, and estimates of the various roads mentioned in the writ of election. The estimated cost of these roads was based upon the estimated quantities to be removed in the excavations, taking into consideration the estimated amount of solid rock, loose rock, and earth, and the estimated cost of laying stone, and this estimated cost was so far in excess of available funds that it was readily seen that it was impossible to spread out the money in hand over all the roads mentioned in the writ of election so as to give any practical results whatever. This estimated cost amounted to <sup>about</sup> ~~\$250,000~~ in the Jonesville Magisterial District, so it was evident that about all that could be done would be to grade as much of the roads as possible; and from the estimates of the amount of quantities to be removed and the cost of removing those quantities it appeared that a larger part of the roads could be graded with possibly a little money to be spent on macadamizing.

In order to give to your Honor some ~~idea of~~ the conditions which confronted your respondent in making up its opinion as to what was the best thing to do under the circumstances, it will be necessary here to go into some detail as to the location of the Jonesville Magisterial District, its topography, population and centers of business.

The Jonesville Magisterial District lies about the central part of Lee County, is about fourteen miles long from north to south and from east to west about nine miles. Running through this District from east to west there are five ridges or mountains with valleys between them, namely, the Stone Mountain on the north, the top of which is about the Virginia & Kentucky State line, next to which is the Poor Valley Ridge, next to the Poor Valley Ridge is the Chestnut Ridge, next to the chestnut Ridge is the River Ridge, next to the River Ridge is Wallens Ridge, and next to Wallens Ridge is the Powell Mountain. Between each of these ridges and mountains there are valleys in which



most of the population of the said District live. These Valleys are known as the Poor Valley lying between Stone Mountain and the Poor Valley Ridge, the Cane Creek and Sugar Run Valley lying between the Poor Valley Ridge and Chestnut Ridge, and the Powell Valley, in which is located the Town of Jonesville, County seat of Lee County; <sup>is between the Chestnut Ridge River Ridge</sup> thence south of the River Ridge is the Powell River and a narrow Valley; thence south of the Wallens Ridge is the Wallens Creek Valley; thence south of the Powell Mountain is the Blackwater Valley, all of which is located in the Jonesville Magisterial District and covers probably one-third in area of the whole District. At the base of the Stone Mountain on the <sup>northern</sup> western side of the District, the Louisville and Nashville Railroad is located. Passing out of the Poor Valley at a gap in the Poor Valley Ridge near Ben Bur, then said Railroad follows Cane Creek Valley eastwardly through the District, and at the mouth of this gap in the Poor Valley Ridge is located the Station of Ben Hur, which, for railroad accommodations, serves mainly the whole of the Jonesville Magisterial District.. In order, therefore, for the population of the said District to reach the railroad point at Ben Hur, it was necessary for all people residing south of the Chestnut Ridge, to cross from one to all of these various ridges, as well as the water courses which flows along these various valleys above mentioned. ~~In~~ the location of the pioneer roads of the County, the roads leading along the valleys, being more easily built and more cheaply maintained, ~~these~~ had received more attention than the roads across these ridges and mountains. Consequently the citizen living farther away had a very difficult way of getting to and from the railroad and the County seat. This being the condition that existed in the said District, several years ago, long before a bond issue had ~~ever~~ been even hoped for, a road application in the name of W.A. Owens and others was begun in the County Court for Lee County when said court was in existence under the old Constitution, the object of which was to lay out and establish a road across these various ridges and mountains from Blackwater to Ben Hur. Surveys were made and the road was located under this application as far as Jonesville from Ben Hur, and under a private subscription by



the citizens of the Town of Jonesville and the appropriation made by the Town of Jonesville, a corporation, a macadamized road was constructed on this survey and location from Ben Hur to the Town of Jonesville, ~~and~~ by the aid of the State Convict Road force. This road as surveyed across the various ridges as aforesaid, passed nearly through the center of the District, about one-half thereof lying on the east and one-half on the west side thereof, crossing the various valleys mentioned above almost at right angles and serving each and all of them with equal convenience. The Ben Hur and Jonesville Pike was completed to Jonesville in the summer of 1909. At this point the funds gave out and there was no means by which the road authorities could proceed with the construction of this cross County highway. Thus it will be seen that the road from Blackwater to the railroad Station at Ben Hur is the most important of all the roads proposed to be built under the bond issue hereinbefore referred to, and this fact has been in the mind of the people and the Board of Supervisors from the time of the institution of the application of W. A. Owens and others up to the present time. Accordingly, the Board of Supervisors, taking into consideration all these facts and exercising <sup>its</sup> ~~their~~ discretion, deemed it wise and proper to let to contract the road known as the Blackwater road, and ~~accordingly~~ proceeded, with the aid of the State Highway Commission and acting con-jointly with ~~them~~, <sup>it</sup> to advertise for and receive bids for the construction of said road. Accordingly, on the \_\_\_\_ day of September, 1911, a contract was entered into between the Board of Supervisors of Lee County and the Cross Construction Company, ~~for the~~ opening and construction of said road.. According to the estimate furnished by the State Highway Commission the quantity of earth and rock to be removed on that road, amounted to 50720 cubic yards. The cost of grading, therefore, according to the contract price of fifty-four cents per cubic yard, would have amounted to \$27,388.80. After this contract was entered into a question arose among the people as to the apportionment of the funds and an order was entered at a meeting of the Board of Supervisors of Lee County on the 4th day of September, 1911, favoring and recommending the apportion-



ment of the funds to be spent upon the roads of the Jonesville Magisterial District, which is one of the **orders** pertaining to this case to which the plaintiff's have not referred in their bill, and which is the first order entered pertaining to the apportionment of the funds, a copy of this order is herewith filed as a part of this answer as exhibit "Z". It will be seen by an inspection of this order that the apportionment of the funds was not in any way to conflict with the contract already entered into between the Board of Supervisors and the Cross Construction Company on the road from Jonesville to Blackwater. Between the entering of the said order announcing the policy of the said Board of Supervisors in regard to the apportionment of the road bond money, the citizens of the District got together at various places and discussed their rights and the propriety of the building of certain roads, and a large body of citizens met the Board of Supervisors at their next meeting in October and brought before the said Board their claims and after considering all the facts and circumstances of each claim on each road, the order of apportionment referred to in the plaintiff's bill was entered, but of course it was entered with the same understanding and reservation theretofore made in the order of September 4th, 1911, namely, that such apportionment should in no way conflict with the contract which the Board had already entered into. It having been estimated as stated above that the cost of grading the Blackwater road would be about \$27,000.00 and the cost of the bridges to be built about \$6,000.00, it was thought ample to retain for this road \$37,000.00 for construction and \$6,000.00 for bridges, and leave sufficient money to macadamize such places in the road as was composed of clay and subject in the winter time to become muddy, but when the State Highway Commission came to construct the road under the said contract, it was found that the estimates made by the Commission under the preliminary surveys, fell far short of the actual amount of quantity contained in the excavation, and after having cut off on the south end of the said road more than one mile, there still remained of excavations, 88,400 yards. It having been supposed that ample money had been apportioned to construct this road, the con-



tractor went on and worked at various points, doing first the easy work, that is taking out the large quantities where dirt was the principle excavation to be removed and leaving the costly part of the excavations unmoved, so when the amount of money that had been apportioned to this road had been consumed, there was yet left about 8,000 to 10,000 yards mostly of rock and costly material to move. This contract having been let at fifty-four cents for unclassified material and the contractor having removed all the dirt and left unmoved the solid rock at the time the funds gave out, gave to the contractor a considerable advantage if the contract should be allowed to drop at that time. Also at the time the amount of money apportioned to this road had been expended, several thousand dollars had been spent in partially grading the north side of Powell Mountain and the south side of Wallens Ridge which could not be used at all unless completed, <sup>by</sup> therefore throwing away entirely some \$5000.00 or \$6000.00 worth of work that had already been done. A bridge had also been constructed across Wallens Creek at a cost of from \$1200.00 to \$1500.00 which could not be used unless the said work on the south side of said Ridge and the north side of said Powell Mountain should be completed. Being confronted with this situation, the Chairman of the Board of Supervisors, D.C. Sewell, who resides in the Jonesville Magisterial District, called together the fellow members of the said Board of Supervisors <sup>before</sup> to enter the order complained of in this case, <sup>was intended,</sup> and took them over the said road for their personal inspection and examination of the conditions that confronted said Board. Upon examination of the said road, the conditions that existed, the unfinished state of road, the almost impassable barrier made by the conditions that existed on the north side of Powell Mountain to the people living on the south side of said Powell Mountain, the fact that a large amount of money had been expended which would be thrown away in paying for partial excavations and the rights-of-way that could not be utilized, and the fact that unless the said road was completed, under the contract with the said Gross Construction Company if said road should hereafter ever be built, would have to be built at a much larger price per yard, <sup>the</sup> Board of Supervisors, exercising <sup>its</sup> their very best discretion for the benefit of all the people, decided unani-



mously that it was the wise and proper thing to do to complete the grading of the said road and to abandon that part of the contract which provided for macadamizing the said road.

In addition to the facts stated above and to explain the conditions which existed which impelled the said Board to reach the conclusion ~~they~~<sup>it</sup> did, respondent states that the north side of the said Powell Mountain is very rough, rugged, and steep, and in order to give to the people living on the south side of the said mountain an outlet to the County seat and the railroad, it is very necessary that the said road should be graded on that side of the mountain. The south side of said mountain is already graded, and said Board can state with pride that it is a most excellent and beautiful road. On the south side of said Powell Mountain is located some of the best lands of Lee County, about one-third the area of the entire Jonesville Magisterial District and nearly one-third of its population. This Blackwater Valley is ~~xxxx~~ traversed by about fifty miles of public road, none of which is improved or intended to be improved by the funds received from the said bond issue, and the said Blackwater road only reaches ~~to the~~ edge of the said Blackwater Valley. The completion of said grading of the Jonesville to Blackwater road will take from \$4500.00 to \$5000.00 more money than was appropriated under the said order of apportionment, so it is very clear that all the money that has been apportioned for the various roads in question will not be used for the completion of the Jonesville to Blackwater road, and it is not the intention of the said Board in entering the said order to deprive the said roads of the benefit of such money as can be judiciously and properly used and expended upon them, but it is the intention of the said Board of Supervisors and the local authorities in the Jonesville Magisterial District, to build as much as possible of the various roads in question and to this end the said local authorities in the said District are expecting to secure next Spring a convict road ~~camp~~<sup>house</sup> and to use the said convicts in the expenditure of the remainder of the money that will be ~~on~~<sup>in</sup> hands, and by the use of said convicts to increase the amount of actual road construction one hundred per cent, or in other words by the expenditure of \$1000.00 in money with the said convict road



force, \$2000.00 worth of road can be constructed, <sup>So</sup> ~~and working along~~ this policy it is believed that more will be realized to each of the said roads than was originally contemplated by the apportionment, as it was originally contemplated that said road work would be done under contract and paid for entirely in cash.

Respondents have nothing to say in derogation ~~of the condition~~ of the importance of improving any of the roads mentioned in the said complaint, but in the opinion of the respondent and the individuals constituting the said Board, the reasons for improving each of the said roads is not so forceful as that in favor of the said Jonesville and Blackwater road. The road leading from near Judge Orr's residence westwardly to the White Shoals District line at Wesley's Chapel is a very important and much travelled road, but it lies along a level country. The grade on this road nearly all the way is fairly good and fairly smooth, and although not as good as it should be, is many times better than the said Jonesville and Blackwater road, *which at many points and in fact almost entirely on the north side of said mountain is on a grade of fifteen to twenty two degrees.*

As to the road leading from Ben Hur to Pennington, a portion of which lies within the Jonesville Magisterial District, this road has been graded and while it is important that the same should be macadamized, the amount of money left for this purpose, even if it could not be used more wisely at some other point, is not sufficient to macadamize more than about three quarters of a mile of this road under the contract price, and it was not contemplated that this road should be macadamized, that lay in the Jonesville District, unless that part which was situated in the Rocky Station District should also be macadamized, and it is now certain that that part lying in the Rocky Station District will not be macadamized because of the lack of funds in that District. The \$2000.00 apportioned to the east and west side of Wallens Creek road is such a small amount that to spread it over the distance of these two roads, would be equal to throwing it away, and the building of the Jonesville to Blackwater road serves all the people living on either end of the said Wallens Creek road. The said Wallens Creek road lies along a valley and while the road is not in good



condition, the <sup>ing</sup>grading is not bad, and it is far more important, all things taken together, that the money apportioned for this road should be expended upon the said Blackwater road. Besides, on the west end of the said Wallens Creek road, a good graded road has been built from near J.F. Albert's residence northwardly across Wallens Ridge to the said Wesley Chapel road, giving to the people living on that end of the road a splendid outlet to the County seat and railroad. On the east end of the said Wallens Creek road a point about midway between the Rocky Station District line and the Jonesville to Blackwater road where it crosses Wallens Creek, the County has opened a fairly good road leading out the south side of the ssid Wallens Ridge and connecting with the said Jonesville to Blackwater road near the top of said Wallens Ridge, so the people living on either section of the Wallens Creek road have no right to complain that they are not receiving their just and due proportion of road funds realized out of said bond issue.

Respondents deny that the said order made and entered on the 27th day of September, 1912, is either illegal or void or that the said Board of Supervisors had no legal right or authority to enter the said order, but your respondents say that the said Board in passing upon the question, was exercising its discretionary power invested in them by the law, that they exercised the said discretion after full and due consideration of all the conditions that existed, and after taking into consideration the right of all parties, and exercised this discretion in a reasonable and legal way not arbitrarily nor unadvisedly, but after the full consideration of every fact and circumstance that existed or that could be discovered in reference to the case in hand. Respondents say that in entering the said order they exercised the discretionary power invested in them by the law and that said discretionary power cannot be interfered with or exercised <sup>for them</sup> ~~one~~ by another, that when the law created the said Office <sup>it</sup> ~~and~~ invested ~~in~~ them with the power to act and determine the question of the manner of the expenditure of ~~certain~~ <sup>is</sup> money, said Board ~~are~~ responsible only to the people who elected <sup>it</sup> ~~them~~ to the said Office, and it is not the province of any



court to interfere with these discretionary powers even though the individual court should have a different opinion and should reach a different conclusion to that of your respondent, which in the particular case respondent feels sure could not be done.

Now having answered as fully as your respondent is advised it should answer, it prays to be hence dismissed with its reasonable costs in this behalf expended.

The Board of Supervisors of Lee County, Va.

By Samuel Terrell & Remington B. B. B. Attorneys.

Virginia,

Lee County, to-wit:

This Day D.C. Sewell, Chairman of the Board of Supervisors of Lee County, personally appeared before me, A.O. Freeman, a Notary Public in and for said County, and made oath that the facts stated in the foregoing answer, so far as stated upon his own information, are true, and so far as stated upon information obtained from others, he believes them to be true.

Given under my hand this the 22nd day of October, 1912.

A. O. Freeman N.P.



Board of Supervisors

Lee County Ga

Advs { Account of  
Defendants

J. M. Thomas & Co

Filed Oct 24 1872

Pennington Bros.

ATTORNEYS AT LAW,

JONESVILLE AND PENNINGTON GARVA



Virginia,

In the Clerk's office of Lee County, in vacation, on this the 25th day of October, 1912.

J. M. Flanary, et al

Plaintiffs

Vs. In Chancery.

The Board of Supervisors of Lee County.

Defendants.

This cause came on this day in vacation before the Judge of the Circuit Court for Lee County, at the court house of Wise County, on the 24th day of October, 1912, on the application of the plaintiff~~s~~ for an injunction upon the bill of the complainant~~s~~ and exhibits filed therewith, the demurrer of the defendant, joinder therein, the answer of the defendant and exhibit therewith and general replication thereto, and argument of counsel.

On consideration of which the demurrer of the defendant is hereby overruled, and the judge of the said court after hearing the arguments of the counsel and considering the facts set up by the bill of the complainant~~s~~ and the answer of the defendant is of the opinion that the injunction prayed for should not be awarded, and therefore doth deny the prayer of the said plaintiffs bill for said injunction, and that defendants recover their costs in this behalf expended.

To J. D. Edds, Clerk, Lee County Va.

H. A. W. Skeen

*the Circuit Court of*  
Judge of Lee County.

Virginia, Lee County, to-wit:

I, J. D. Edds, Clerk of the Circuit Court in and for the County and State aforesaid, do hereby certify that the foregoing is a true and perfect copy of an order entered in the Chancery Cause of J. M. Flanary, et al vs The Board of Supervisors, ~~xx-~~  
~~xxxx~~ in vacation, in Chancery Order Book No. 9, page 371 etc.

Given under my hand, on this the 29th day of October, 1912.

J. D. Edds  
Clerk



James M. Flannery Jr et al  
vs Copy of Order  
in Vacation.  
The Board of Supervisors  
of Lee County.

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Superior Court of Lee County  
James K. Ketchum

R. H. Cantor

George M. Harrison

Edward G. White

John A. Buchanan



To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

The demurrer of the Board of Supervisors of Lee County, Virginia composed of D.C.Sewell, Chairman, C.D.Bailey, T.C.Barlow, J.J.Maness and C.D.Fugate, to a bill exhibited in your Honor's court against said Board of Supervisors by James M.Flanary, Jr., and others.

Respondents say that said bill is not sufficient in law to call upon them to answer in this Honorable court and they demur to the same and ~~pr~~ay judgment of their said demurrer &c.

And demurrant assigns the following grounds of demurrer,

First: The Board of Supervisors of Lee County in making the order on the 27th day of September, 1912, being the order mentioned, complained of, and sought to be enjoined by the bill, acted in their judicial capacity, and not ministerially, hence said order can not be attacked, over-ruled, set aside, annulled or enjoined by the Circuit Court by way of mandamus or injunction, but if attacked at all it must be by appeal,

Second. The Circuit Court of Lee County has no jurisdiction by mandamus or injunction to over-rule, set aside, vacate or annul an order made by the Board of Supervisors of said County.

Third. The Board of Supervisors of Lee County are clothed by law with the control, supervision, management and jurisdiction over all the County roads, cause-ways, bridges and landings and wharves erected or repaired in the County, (see ~~Sub~~Section 1, Sec, 944a of Code of 1904). This control is absolute and can not be attacked by mandamus or injunction.

Fourth: In the distribution of the Bond Issue funds among the several roads of the said District, and the manner and time of the expenditure of the same, are matters wholly within the discretion of the Board of Supervisors, and when such discretion is exercised in a legal, proper and reasonable manner, such action can not be attacked by mandamus or injunction. The complainants do not allege in their said Bill, that the said Board of Supervisors, in making the order complained of, acted in an illegal or improper manner.

*Demurrer & Conclusion*  
*Respectfully Submitted*



Board of Supervisors  
Lee County ~~the~~  
acts. } Grounds of  
          } Denial

J. M. Fleming -

Filed October 24<sup>th</sup> 1912



Virginia:

At a Circuit Court continued and held for Lee County at the Court-house thereof, on Monday, the 19th day of September, 1910.

James M. Wheeler and others, petitioners, on application to the Circuit Court for Lee County, for an order for an election on the question of issuing County bonds for the purpose of macadamizing and permanently improving certain roads in the Rose Hill, Jonesville, Rocky Station, and Yokum Station Magisterial Districts of Lee County, Virginia.

This day came James M. Wheeler, William Bailey and J.M. Osbourne, being a majority of the members of the Board of Supervisors of Lee County, also B. F. Kincaid, and more than fifty other free holders of Lee County, Virginia, and presented their petitions in writing representing themselves as citizens of Lee County, Virginia, and as free-holders of the said County, which said petitions asked that the Circuit Court of Lee County enter an order requiring the Judges of election, at such time as the Court might fix, to be designated in said order to open the poll and take the sense of the qualified voters of the County of Lee, on the question whether the Board of Supervisors shall issue bonds for the purpose of macadamizing and improving certain roads situated in the said Magisterial Districts as aforesaid, and the Court being satisfied upon the said motion that more than fifty of the said persons signing said petition are free holders and citizens of the County of Lee, and that a majority of the members of the Board of Supervisors of the said County have signed said petition and request, it is therefore ordered that the Judges of election for the County of Lee at the various precincts therein shall on the 29th day of November, 1910, open a poll and take the sense of the qualified voters of the County of Lee on the question whether the Board of Supervisors shall issue bonds for the purpose of macadamizing and otherwise permanently improving the roads in the various districts herein after set out, which said election shall be held according to law as provided by the Acts of the General Assembly ~~xxxxxxx~~ of Virginia



approved February 25th 1908, as amended by the Acts of the General Assembly approved February 16th, 1910,

The Maximum amount of bonds to be issued for the improvement of the roads in the Rose Hill Magisterial District shall not be in excess of \$65,000.00.

The maximum amount of bonds to be issued for the improvement of the roads and bridges in the Jonesville Magisterial District shall not be in excess of \$89,000.00.

The maximum amount of bonds to be issued for the improvement of the roads in the Rocky Station Magisterial District shall not be in excess of \$100,000.00.

The maximum amount of bonds to be issued for the improvement of the roads in the Yokum Station Magisterial District shall not exceed \$110,000.00.

The roads to be macadamized and permanently improved in the Rose Hill Magisterial District, together with their length, width, and approximate location are as follows:

The main Fincastle road leading from Cumberland Gap to the White Shoals District line near the McLin store on the Baylor Land, said road to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet with twelve foot macadam, including such changes as may be necessary in the said road to put the same upon the proper grade, the approximate length of which road is twenty miles.

A road leading from, at or near Nash's store to the Tennessee line a distance of about one mile to be constructed on a minimum right of way thirty feet and a minimum road bed of sixteen feet.

A road leading from Walnut Hill to the Tennessee line a distance of about two miles on same width of right of way and road bed as the last named road.

A road leading from Kesterson's store to the Tennessee line a distance of about three miles to be constructed on the same width of right of way and road bed as the last two roads aforesaid.

A road leading from the Fincastle road by way of Ball's mill to the Tennessee line a distance of about three and one-half



miles to be located and built on the same width of right of way and road bed as the last named road.

A road leading from the branch on the road hereinafter next named, at or near Nelson's, a distance of about one and one-half miles to be constructed on the same width right of way and have the same width road bed as the last road aforesaid.

A road leading from near Bales mill at Ewing on the Fincastle road to the Tennessee line a distance of about three miles to be constructed upon the same width right of way and the same road bed as the last named road.

A road leading from the Fincastle road near the residence of the late William F. Gibson southwardly to the Tennessee line a distance of about three and one-half miles to be constructed upon the same width right of way same road bed as the last mentioned road.

A road leading from a point on the last mentioned road as aforesaid about half way between William F. Gibson's residence and the Tennessee line southwardly to the Tennessee line a distance of about three mile to be constructed upon the same width right of way and road bed as the last named road.

A road leading from Kincaid & Roullette's store southwardly from the Fincastle road a distance of about five miles to the Tennessee line to be constructed upon the same width right of way and to have the same width road bed as the last named road.

A road leading from near Fulkerson's bridge on the Fincastle road southwardly so as to intersect with the last named road a distance of about one and one-fourth miles to be constructed upon the same width right of way and to have the same width road bed as the last named road.

One-half of a road leading from the old Fincastle road at Boon's Path at the old Baylor store southwardly a distance of about six miles to Ann's Virginia, to be constructed upon the same width right of way and to have the same width road bed as the last named road, the other half to be built by the White Shoals District.

A road leading from the said Fincastle road to Wheeler Depot a distance of about one-fourth mile to be constructed up-



on the same width right of way and to have the same width road bed as the last named road.

A road leading from the old Fincastle road to a point at or near Levi Howard's residence a distance of three-fourths of a mile to be constructed upon the same width right of way and to have the same width road bed as the last named road.

A road leading from the Fincastle road northwardly to a point near C.N.Morgan's residence a distance of about one and one-half miles to be constructed on the same width right of way and to have the same width road bed as the last named road.

The roads to be macadamized and otherwise permanently improved in the Jonesville Magisterial District, together with their length, width, and approximate location and bridges are as follows:

A road beginning at the end of the Jonesville and Ben Hur pike, near Jobe Crowell's thence southwardly by way of B. H. and D. C. Sewells residence crossing the Blackwater Hill and Powells river by way of Hunters Gap to Blackwater, to be constructed upon a minimum right of way of thirty feet, and minimum road bed of twenty feet, a distance of about eight miles.

A road beginning at the Jonesville and Ben Hur pike at a convenient point near the Pumping Station and water works of the town of Jonesville thence southwardly so as to intersect with the main street of the town of Jonesville, near Mrs. Sallie Pridemore's residence, thence westwardly following the old Fincastle road through the town of Jonesville to the White Shoals District line near D. C. McClure's residence, a distance of about four miles to be constructed upon a minimum right of way thirty feet and a minimum road bed of twenty feet.

A road leading from a point on the road last aforesaid beginning at a point between A. W. Couk's store building and R.L. Pennington's Bank building in the town of Jonesville, and following the old Fincastle road eastwardly by way of B. H. and D. C. Sewells residence to the Powells river at the Ferry near Isaac Woliver's residence a point on the line between Rocky Station and Jonesville Magisterial Districts, a distance of about three and one-half miles to be constructed upon a minimum right of way of thirty feet and a



minimum road bed of twenty feet.

A road leading from the junction of the Jonesville and Ben Hur pike near Ben Hur and the Cane Creek road eastwardly to the Rocky Station District line near G. W. King's residence, a distance of about two and one-fourth miles to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet.

A road leading from the Jonesville and Ben Hur pike at the junction of the said road and the Sugar Run road near the residence of John Hamblen westwardly to the White Shoals District line a distance of about three miles to be constructed upon a minimum right of way of thirty feet and minimum road bed of twenty feet.

A road leading from a point east of Judge Orr's residence from the old Fincastle road westwardly to the White Shoals Magisterial District near Wesley's Chapel a distance of about four miles to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet.

A road leading from the last road aforesaid at or near the west end of the George R. Rutherford farm southwardly by way of the Hurrican neighborhood to Wallens creek to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet a distance of about four mile.

The road known as the Wallens creek road leading from the Rocky Station District line near the residence of H. T. Fulkerson eastwardly crossing the Jonesville and Blackwater pike in the neighborhood of Hunters Gap to a point near the Merriman Church to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet, a distance of about five miles.

A road leading from the Ocoonita station eastwardly along the Poor Valley by way of Truro through the Gap of the Poor Valley Ridge to the Ben Hur pike near the residence of E. M. Pennington, a distance of about three miles to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet.

A road leading from the Old Fincastle road near the



residence of Mr. McConnell and Mr. Wampler northeastwardly by way of W. P. Wood's residence to the District line near Shavers Ford to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet, a distance of about two mile, Also a bridge across Powells river and Wallens creek on the road leading from Jonesville to Blackwater.

The roads to be macadamized and otherwise permanently improved and the bridges to be built in the Rocky Station Magisterial District, together with their length, width and approximate location are as follows:

A road beginning at a point at Turner's siding near the town of St. Charles thence running through the gap of the mountain known as Pennington Gap through and by way of the town of Pennington Gap westwardly from the town of Pennington up the Cane creek to the Jonesville Magisterial District line near the residence of W. M. Stewart, a distance of about seven miles to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet, with twelve foot macadam.

A road beginning in the town of Pennington Gap at such convenient point on the last road as aforesaid as may be best suited for proper location thence southwardly crossing Powells river at such point as may prove best on proper survey for location of a bridge by way of Witt's store to Sticklysville a distance of about ten miles to be constructed upon a minimum right of way thirty feet and a minimum road bed of twenty feet, with twelve foot macadam.

A road leading from the town of Pennington Gap at such convenient point as is best suited for the location on the first road named herein eastwardly up Dry Branch country to the Yokum Station District line a distance of about three and one-half miles to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet.

The permanent improvement of the road known as the Wallens creek road beginning at the Jonesville District line in the neighborhood of H. C. Fulkerson's residence on Wallens Creek eastwardly to the end of the said Wallens creek road at the head of Wallens creek a distance of about eight miles, to be constructed



upon a minimum right of way of thirty feet and a minimum road bed of twenty feet.

Also a bridge across Powells river on the said road leading from said town of Pennington Gap to Stickleysville.

A road leading from Wallens Creek road to Jasper, said road to be constructed upon the minimum right of way of thirty feet and a minimum road bed of twenty feet, said road to be a well graded dirt road.

The roads to be macadamized and otherwise permanently improved and the bridges to be built in the Yokum Station Magisterial District, together with their length, width and approximate location are as follows:

A road beginning at the mouth of Reed's creek at the Rocky Station District line and running to Keokee a distance of about ten miles said road to be a graded dirt road to be constructed upon a minimum right of way of thirty feet and minimum road bed of twenty feet.

A road leading from the town of Keokee northwardly to the Kentucky State line a distance of about one mile said road to be a well graded dirt road, and to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet.

A road leading from the town of Keokee toward the Wise County line a distance of about three miles so as to intersect ~~at~~ the Wise County line with a road which is proposed to be built by Wise County, said road to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet, said road to be a well graded dirt road.

A road leading from the town of Keokee to Olinger a distance of about six miles, said road to be constructed upon a minimum right of way of thirty feet <sup>with</sup> a minimum road bed of sixteen feet.

A road leading from the town of Dryden down the Dry Branch to the Rocky Station District line a distance of about two miles to be constructed upon a right of way of thirty feet and a minimum road bed of twenty feet.



A road beginning at the Rocky Station District line and running down the Lovelady creek and up the Wild Cat Valley to the Wise County line, said road to be constructed upon a minimum right of way of thirty feet and a minimum road bed of sixteen feet a distance of about eight mile.

A road beginning at the Wise County line in the Cedar Gap thence running westwardly through Turkey Cove by way of Yokum Station to the Rocky Station District line a distance of about twelve miles, which road is to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet, to be macadamized with a minimum width of twelve feet of macadam.

A road leading from the last road aforesaid at some convenient point on said road to Dryden a distance of about two miles, which said road is to be constructed upon a minimum right of way of thirty feet and a minimum road bed of twenty feet, with a minimum of twelve feet of macadam.

Also a suitable bridge across Powells river on said road at such point as may be necessary.

A road leading from the said Big Stone Gap, Turkey Cove and Yokum Station macadamized road as aforesaid at some convenient point thereon to the town of Clinger, a distance of about twelve miles, together with a bridge across Powells river on said road, said road to be constructed on a minimum right of way of thirty feet and a minimum road bed of twenty feet, with a minimum twelve feet of macadam.

*a copy,*

*Teste: J. D. Eads, clerk,*



"Exhibit A"



Virginia:

At a Circuit Court continued and held for Lee County, at the Court-house thereof, on Saturday, the 10th day of December, 1910.

Whereas, heretofore on the 19th day of September, 1910, an order was entered, pursuant to the Acts of the General Assembly of Virginia and pursuant to the petition of a majority of the Board of Supervisors of Lee County, and the petition of more than fifty free holders of the said County, requiring the Judges of election on the 29th day of November, 1910, to open to open the poll and take the sense of the qualified voters of the County of Lee on the question whether the Board of Supervisors of the said County shall issue bonds for the purpose of macadamizing and otherwise permanently improving certain roads and bridges in the Rose Hill Magisterial District, the Jonesville Magisterial District, The Rocky Station Magisterial District, and the Yokum Station Magisterial District named and set out in the said order; and,

WHEREAS, it now appears to the Court that the Commissioners of election of the said County of Lee have met at the Office of the County Clerk of Lee County and have taken an oath to discharge their duties and have canvassed the returns and have certified the result of the said election to the Circuit Court of Lee County in the following words and figures to-wit:

To the Circuit Court of Lee County, Virginia:

We, the undersigned, constituting the Board of Commissioners of election for Lee County, Virginia, do hereby certify that we met on this the 1st day of December, 1910, at the Office of the County Clerk at the Court-house of Lee County, and after having taken an oath before said Clerk to faithfully discharge our duties as such Commissioners, proceeded in the presence and by the aid of the said Clerk, to canvass the returns of the special election held in Lee County, Virginia, on the 29th day of November, 1910, which election was held pursuant to an order of the Circuit Court of Lee



County, Virginia, entered at the September term thereof, 1910, submitting to the qualified voters in the said County, the question whether the Board of Supervisors shall issue bonds for the purpose of macadamizing and otherwise permanently improving certain roads and bridges located in the Rose Hill Magisterial District, Jonesville Magisterial District, Rocky Station Magisterial District, and Yokum Station Magisterial District of Lee County, Virginia, and having examined the returns from each and all of the precincts of the said County of Lee, made by the judges and clerks thereof, we do hereby certify that the following is a true and correct abstract of the votes cast in said election as follows:

That there were cast in the Rose Hill Magisterial District two hundred and seventy-eight votes in favor of the Bond issue for the Rose Hill Magisterial District, and that there were cast in said Magisterial District eighty-two votes against bond issue for the said District, and that at the various precincts of the whole County of Lee there were cast fifteen hundred and seventy-five votes in favor of the Bond issue for the said Rose Hill Magisterial District, and that six hundred and fifty-two votes were cast at the various precincts of the whole County of Lee against bond issue for the said Rose Hill Magisterial District.

That there were cast in the Jonesville Magisterial District five hundred and ninety-one votes in favor of the Bond issue for the Jonesville Magisterial District, and that there were cast in said Magisterial District fifty-four votes against bond issue for said District, and that at the various precincts of the whole County of Lee there were cast fifteen hundred and seventy (1570) votes in favor of the Bond issue for the said Jonesville Magisterial District, and that six hundred and forty-three votes were cast at the various precincts of the whole County of Lee against bond issue for the said Jonesville Magisterial District.

That there were cast in the Rocky Station Magisterial District three hundred and ninety-four (394) votes in favor of the bond issue for the Rocky Station Magisterial District, and



that there were cast in said Magisterial District one hundred and eighty (180) votes against bond issue for the said District, and that at the various precincts of the whole County of Lee there were cast fifteen hundred and eighty-six (1586) votes in favor of the bond issue for the said Rocky Station Magisterial District, and that six hundred and forty-five (645) votes were cast at the various precincts of said County of Lee against said bond issue for the said Rocky Station Magisterial District.

That there were cast in the Yokum Station Magisterial District two hundred and forty-nine (249) votes in favor of the bond issue for the Yokum Station Magisterial District, and that there were cast in the said Magisterial District one hundred and twenty-seven (127) votes against bond issue for the said District, and that at the various precincts of the whole County of Lee there were cast fifteen hundred and seventy-two (1572) votes in favor of the bond issue for the said Yokum Station Magisterial District, and that six hundred and fifty-three (653) votes were cast at the various precincts of the whole County of Lee against bond issue for the said Yokum Station Magisterial District.

We, therefore, hereby determine and declare, and hereby certify to the Circuit Court of Lee County, that at the said election held on the 29th day of November, 1910, a majority of the qualified voters of the Rose Hill Magisterial District voting upon the question, voted in favor of the said bond issue for the Rose Hill Magisterial District, and that also a majority of the qualified voters of the whole County, voting upon the question, voted in favor of the bond issue for the said Rose Hill Magisterial District.

And, that at the said election held as aforesaid, a majority of the qualified voters of the Jonesville Magisterial District voting upon the question voted in favor of the bond issue for the Jonesville Magisterial District, and also that a majority of the qualified voters of the whole County voting upon the question voted in favor of the bond issue for the Jonesville Magisterial District.



And that at the said election held as aforesaid a majority of the qualified voters of the Rocky Station Magisterial District voting upon the question voted in favor of the bond issue for the Rocky Station Magisterial District, and also that a majority of the qualified voters of the whole County voting upon the question voted in favor of the bond issue for the said Rocky Station Magisterial District.

And that at the said election held as aforesaid a majority of the qualified voters of the Yokum Station Magisterial District voting upon the question voted in favor of the bond issue for the Yokum Station Magisterial District, and also that a majority of the qualified voters of the whole County voting upon the question voted in favor of the bond issue for the said Yokum Station Magisterial District.

Given under our hands this the 1st day of December, 1910, and attested by H. C. T. Ewing, County Clerk, and ex-officio Clerk of the Board of Commissioners of election.

C. P. Horton

J. A. Sadler

W. C. Tally Commissioners.

D. C. McClure

C. H. Willoughby

Attest: H. C. T. Ewing, Clerk.

And whereas this is the next term of the Circuit Court next after holding of the said election as aforesaid, and,

Whereas, it now appears to the Court by the report and certificate of C. P. Horton, J. A. Sadler, W. C. Tally, D. C. McClure and C. H. Willoughby, Commissioners of election for Lee County, Virginia, that a majority of the qualified voters of the County voting upon the question and also a majority of the qualified voters of the Rose Hill Magisterial District voting on the question are



in favor of issuing bonds for the purpose of macadamizing and otherwise permanently improving the said road, in said Magisterial District, described and named in said order of election, it is therefore ordered by the Court that the Supervisors of the County of Lee proceed at their next meeting to carry out the wishes of the voters as expressed in the said election, and to determine what amount of bonds may be necessary for said purpose so that the same shall not be in excess of \$65,000.00, and,

Whereas, it further appears by the said report and certificate of the said C.P.Horton, J. A. Sadler, W. C. Tally, D.C. McClure and C. H. Willoughby, Commissioners of the election for Lee County, Virginia, that a majority of the qualified voters of the County voting upon the question, and also a majority of the qualified voters of the Jonesville Magisterial District voting on the question are in favor of issuing bonds for the purpose of macadamizing and otherwise permanently improving the said roads and bridges in said Magisterial District described and named in said order of election, it is therefore ordered by the Court that the Supervisors of the County of Lee proceed at their next meeting to carry out the wishes of the voters as expressed in the said election, and to determine what amount of bonds may be necessary for said purpose so that the same shall not be in excess of \$89,000.00, and,

Whereas, it further appears by the said report and certificate of the said C.P.Horton, J. A. Sadler, W.C.Tally, D.C. McClure and C. H. Willoughby, Commissioners of election for Lee County, Virginia, that a majority of the qualified voters of the County voting upon the question, and also a majority of the qualified voters of the Rocky Station Magisterial District voting on the question are in favor of issuing bonds for the purpose of macadamizing and otherwise permanently improving the said roads and bridges in said Magisterial District described and named in said order of election, it is therefore ordered by the Court that the Supervisors of the County of Lee proceed at their next meeting to carry out the wishes of the voters as expressed in the said election, and to determine what amount of bonds may be necessary for the



said purpose so that the same shall not be in excess of \$100,000.00

And whereas, it further appears by the said report and certificate of the said C.P.Horton, J. H. Sadler, W. C. Tally, D.C. McClure and C. H. Willoughby, Commissioners of election for Lee County, Virginia, that a majority of the qualified voters of the County voting upon the question, and also a majority of the qualified voters of the Yokum Station Magisterial District voting on the question are in favor of issuing bonds for the purpose of macadamizing and otherwise permanently improving the said roads and bridges in said Magisterial District described and named in said order of election, it is therefore ordered by the Court that the Supervisors of the County of Lee proceed at their next meeting to carry out the wishes of the voters as expressed in said election and to determine what amount of bonds may be necessary for said purposes so that the same shall not be in excess of \$110,000.00.

*A copy:*

*Teste: J.P. Edass, Clerk*



"Exhibit-D"



Virginia,

At a call meeting of the Board of Supervisors begun and held for Lee County, at the Courthouse thereof, on Wednesday, the 15th day of March, 1911.

Present William Bailey, Chairman, J.M.Wheeler, H.<sup>H</sup>.Myers, J.M.Osburn, and J.J.Maness, members of said Board.

Whereas an election was held in Lee County Virginia, on the 29th day of November 1910 on the question of issuing the bonds of Lee County, Virginia, for road improvement in certain of the Districts of the said County which election resulted in favor of the question of issuing bonds for road improvement in the said several Districts.

And whereas an order was entered at the December term, 1910, of the Circuit Court for Lee County, requiring the Supervisors of the County of Lee to proceed at their next meeting to carry out the wishes of the Board as expressed in the said election.

And whereas a meeting of the said Board of Supervisors was held at the Court-house of Lee County, on the 19th day of December, 1910, at which time an order was entered in respect to the issuance of the said bonds which is recorded at page 383 &c of Supervisors record book No. 3, to which reference is here made,

And whereas said meeting was a special meeting of the said Board of Supervisors and a question has been raised whether the same was properly called and held pursuant to Section 830 of the Code.

Now, therefore, in order to cure any defect in said order of the manner in which said special meeting of said Board was called and held, and in order to carry out the order of the said Circuit Court of Lee County entered at the December term, 1910, and the wishes of the people as expressed in the said election;

Therefore, Be It Resolved that there shall be issued for road improvements in the Rose Hill Magisterial District the sum of Sixty-Five Thousand Dollars (\$65,000.00) of bonds of Lee County to be used for road improvement on the roads of the said Rose Hill Magisterial District mentioned in the said writ of election;

That there shall be issued for road improvement in the Jonesville Magisterial District the sum of Eighty-Nine Thousand Dollars (\$89,000.00) of bonds of Lee County to be used for road improvement on the roads of the said Jonesville Magisterial District mentioned in the said writ of election;

That there shall be issued for road improvement in the Rocky Station



Magisterial District the sum of One Hundred Thousand Dollars (\$100,000.00) of bonds of Lee County to be used for road improvement on the roads of the said Rocky Station Magisterial District mentioned in the said writ of election:

That there shall be issued for road improvement in the Yokum Station Magisterial District in the sum of One Hundred Ten Thousand Dollars (\$110,000.00) of bonds of Lee County to be used for road improvement on the roads of the said Rocky Station Magisterial District mentioned in the said writ of election.

Be It Further Resolved that J.C.Noel and Robt.L.Pennington are hereby appointed as agents to negotiate a sale or sales of said bonds and report their action from time to time as may be necessary to this Board.

Whereas, at a Special meeting of the Board of Supervisors of Lee County held on the 30th day of January, 1911, at the Court-house of said County as appears by the record of the Board of Supervisors in Book No.3, page 383 &c. a resolution was adopted confirming the contract of the sale of the total amount of \$364,000.00 of Lee County bonds:

And whereas attorneys for Seasongood & Mayer, the parties contracting for said bonds, have held the said contract for sale below par of said bonds.

Therefore, be it resolved that the said resolution confirming the said appropriation of sale and the said contract of sale be and the same is hereby annulled and set aside:

And whereas Seasongood & Mayer have made the following proposition to the Special Agents of this Board, which is in the following words and figures, to-wit:

"Cincinnati, O., March 6, 1911.

Mr Robt.L.Pennington

Mr. J.C.Noel                      Special Agents of the Board of Supervisors of Lee County, Virginia.

For \$364,000. Bonds of Lee County, Virginia, to be issued for the purpose of Road Improvement, dated January 2, 1911, bearing interest at the rate of 5 1/2% (five and one-half per cent) per annum, payable semi-annually on the first days of January and July, both principal and interest payable at the Hanover National Bank, New York City, the principal sum to mature, as follows: \$14,000. Jan 1st 1916: \$15,000. Jan 1, in each of the years 1917 to 1930, both years inclusive: \$20,000. Jan.1, in each of the years 1931 to 1937, both years inclusive, to be issued in denominations of \$1,000. each, we offer par, two percent premium, and interest at the rate



of 4% (four per centum) per annum from January 2, 1911 to date of delivery and payment. The bonds to be delivered to us in Cincinnati, with all coupons attached, as follows:

\$90,000.	April 1, 1911.
\$90,000.	June 28, 1911.
94,000.	October 1, 1911.
90,000.	December 28, 1911.

Our option to anticipate any or all of said deliveries either wholly or in part at any time prior thereto.

Prior to delivery of said bonds to us, we are to be furnished with all papers evidencing the fact that said bonds are regularly and legally issued, and the valid and binding obligations of Lee County, Virginia, to the satisfaction of our attorneys, Storey, Thorndike, Palmer & Dodge of Boston, Mass.

We are to furnish at our expense suitable lithographed blank bonds for said issue.

As evidence of good faith, we have deposited with you our certified check No. 4643 in the sum of Three Thousand Six Hundred and Forty Dollars, (\$3,640.)

Respectfully submitted,

Seasongood & Mayer  
per Works.

We, the undersigned, Special Agents of the Board of Supervisors of Lee County, Virginia hereby accept the foregoing proposition subject to the approval and ratification of the said Board of Supervisors.

J.C.Noel

Robt L.Pennington.

And whereas the Board has fully considered the said contract and deemed it advisable to approve and confirm said contract of sale;

Therefore, be it resolved that the said proposition and the acceptance by the said Special Agents, be and the same is hereby approved, and the said J.C.Noel and Robt,L.Pennington are hereby directed as the agents of this Board to carry out in full the terms of the said contract, and report their action in reference thereto from time to time to this Board.

Supervisors Record Book No.3  
pages 401, 402 &c.

*A copy,  
List: J. S. Eddo, Clerk*



General Record Book No. 1

RECEIVED

It is hereby approved and accepted by the Board of Supervisors of the County of ...

Wm. F. Pennington

J. C. Noel

Approved by the Board of Supervisors of the County of ...

noted

Respectfully submitted

Respectfully submitted

Exhibit B

30,000. December 28, 1911.  
24,000. October 1, 1911.  
200,000. June 28, 1911.  
200,000. April 1, 1911.

One dollar to anticipate and ... of ... delivered ...

The Board of Supervisors of the County of ...

... 8, 1911 ...



*(Affidavit)*

Virginia,

At a meeting of th Board of Supervisors begun and held for Lee County, at the Court-house, on Monday, the 2nd day of October, 1911.

Present: William Bailey, Chairman, H.<sup>F</sup>.Myers, J.M.Osburn, J.J.Maness, and J.H.Humphreys, Members of said Board.

Whereas, by an election held in four of the Magisterial Districts of Lee County in November, 1910, it was determine that the sum of Eighty-Nine Thousand Dollars should be raised and used for the improvement of certain roads in the Jonesville Magisterial District named and set out in the writ of election; And,

Whereas, the State Highway Commission has ascertained that said sum of Eighty-Nine Thousand Dollars falls far below the amount required to improve each one of the roads mentioned in said order, which requires a distribution of said fund between said several roads and it is admitted by all that this distribution should be largely based upon the importance to the dstrict of the roads to be improved:

Therefore be it resolved that the sum of Thirty Seven Thousand Dollars be and the same is hereby appropriated for the construction of the road leading from the end of the Jonesville and Ben Hur Pike at or near the house of Job Crowell to Blackwater, and an additional sum of Six Thousand Dollars for the purpose of constructing a bridge across the Powells River; that Fourteen Thousand Dollars be and the same is hereby appropriated for the building and construction of the roads leading from at or near the Pump House Station on the Jonesville and Ben Hur Pike to the District line near D.C. McClure's, that Four thousand Five Hundred Dollars be appropriated for construction and permanently improving the road leading from the old Fincastle road near James W.Orr's to Wesley Chapel: That Ten Thousand Dollars be and the same is hereby appropriated on the road leading from the last named road at a point near the George Rutherford land by way of the Hurricane to Wallens Creek; that three Thousand Dollars be and the same is hereby appropriated on the road leading from Jonesville to the Poteet Ferry known as the old Fincastle road; that Twenty-Five Hundred Dollars be and the same is hereby appropriated on the road leading from the last named road near McConnell's to the District line at Shaver's Ford; That One Thousand Dollars be appropriated on the Wallens Creek road lying on the east side of the Jonesville and Ben Hur road; and that One Thousand Dollars be appropriated to the West side of the said Wallens Creek Road; That Three Thousand Dollars be and the same is hereby appropriated to the road known as the Sugar Run Road which



leads from Ben Hur Pike near Hamblen's to the White Shoals District line;  
that Two Thousand Dollars be and the same is hereby appropriated to the road  
leading from the Ben Hur Pike near E.M.Pennington's to Ocoonita; And that  
\* Seven Thousand Dollars be appropriated on the road leading from the Ben Hur  
Pike near Ben Hur to the Rocky Station District line near W.P.M.Stewart.  
Each of the above named roads are required to bear, out of the funds herein  
appropriated, its proportionate part of the expenses of surveying and locat-  
ing saidroads.

Supervisors Record Book No.3

page 484 &c.

*a copy.*  
*Teste: J.D. Esss clerk*



Exhibit D



(Last order)

Virginia ,

At a call meeting of the Board of Supervisors begun and held for Lee County at the Court-house thereof on Friday the 27th day of September 1912.

Present D.C.Sewell Chairman C.D.Fugate, T.C.Barlow, C.D.Bailey, and J.J. Maness members of said Board.

Whereas the Board of Supervisors have this day personally and as a Board gone over the Blackwater Road in the Jonesville District, and the financial condition of the Jonesville District, with respect to its bond issue ect, and finding said road in an unfinished and unconnected condition and believing that if left in its disconnected condition that the expenditure heretofore made on same will be in a large degree wasted and the road of little service to the public and that most of the road to be yet constructed is rock and will hereafter cost more than the contract price, do decide that the grading on said road should be finished and connected;

It is therefore ordered by the Board that the Cross Construction Company proceed under its contract to connect and finish the grading on said road, and an additional sum of said Bond issue money of said District be and is hereby appropriated and set apart for the payment for said grading, and that no further contract or letting of work in said district with reference to said bond issue be made until the amount necessary to finish said grading be ascertained this not interfering with existing contracts or work being done.

Supervisors Record Book No.4

Page 114 &c.

A copy,

List: J. D. Edds, Clerk



*"Exhibit E"*